

**OFFICE OF THE CHIEF OF POLICE**

**SPECIAL ORDER NO. 27**

**September 1, 2001**

**SUBJECT: INVESTIGATING AND ADJUDICATING NON-CATEGORICAL USE OF FORCE INCIDENTS**

**PURPOSE:** The United States Department of Justice and the City of Los Angeles have entered into a legally binding agreement known as the Consent Decree. In order to comply with the Decree, certain revisions are required to the Department's procedure for investigating and adjudicating "Non-Categorical" use of force incidents.

This Order deactivates the Use of Force Report, Form 1.67.2; revises the procedure for investigating and adjudicating Non-Categorical uses of force; activates the Non-Categorical Use of Force Report, Form 1.67.05, and the Use of Force Internal Process Report, Form 1.67.04; and, assigns the Commanding Officer, Risk Management Group (RMG), as the review authority for Non-Categorical use of force incidents. This Order supercedes the Human Resources Bureau Notice issued on July 30, 2001, regarding the same subject.

**PROCEDURE:**

- I. THE USE OF FORCE REPORT, FORM 1.67.2 - DEACTIVATED.** The Use of Force Report, Form 1.67.2, is deactivated. The discontinued Form 1.67.2 shall be marked "obsolete" and placed into the divisional recycling bin. Supervisors shall no longer use this form for any use of force investigation.
- II. CATEGORICAL/NON-CATEGORICAL USE OF FORCE - DEFINED.** A reportable use of force incident (Manual Section 3/245) is classified, per the Consent Decree, as either Categorical or Non-Categorical.
  - A. Categorical Use of Force.** A Categorical use of force incident involves:
    - \* The use of deadly force (e.g. discharge of a firearm) by a Department employee;
    - \* All uses of an upper body control hold by a Department employee, including the use of a modified carotid, full carotid or locked carotid;
    - \* All deaths while the arrestee or detainee is in the custodial care of the Department (also known as an In-Custody Death or ICD);

- \* A Use of force incident resulting in death (also known as a Law Enforcement Activity-Related Death, or "LEARD");
- \* A use of force incident resulting in an injury requiring hospitalization (also known as a Law Enforcement-Related Injury Incident or LERII);
- \* All head strike with an impact weapon (e.g., baton, flashlight etc.); or,
- \* An incident in which a member of the public is bitten by a Department canine and hospitalization is required. (Under current Department policy, a canine bite is not a use of force but has been included in this category to satisfy the provisions of the Consent Decree.)

Critical Incident Investigations Division (CIID) is responsible for the administrative investigation of all Categorical use of force incidents, accidental discharges of a firearm, and animal shootings. In addition, CIID investigates certain uses of force by non-Department employees, e.g., tactical officer involved shooting incidents involving Fire Department arson investigators. Investigations by CIID are not affected by this Order.

- B. Non-Categorical Uses of Force.** All other reportable uses of force, including the discharge of a TASER or use of a chemical irritant control device, are classified as Non-Categorical use of force incidents and shall be investigated and adjudicated in accordance with this Order.

**III. NON-CATEGORICAL USE OF FORCE REPORT, FORM 1.67.05 - ACTIVATED.** The Non-Categorical Use of Force Report, Form 1.67.05, is activated.

- A. Use of Form.** This form shall be completed for all reportable Non-Categorical use of force incidents.
- B. Completion.** An uninvolved supervisor shall complete the Non-Categorical Use of Force Report.
- C. Distribution.** The original Non-Categorical Use of Force Report, Form 1.67.05, shall be attached to, and become a part of the Non-Categorical Use of Force Internal Process Report, Form 1.67.04. Distribution of the Non-Categorical Use of Force Report shall be

the same as the Non-Categorical Use of Force Internal Process Report.

**IV. NON-CATEGORICAL USE OF FORCE INTERNAL PROCESS REPORT, FORM 1.67.04 - ACTIVATED.** The Non-Categorical Use of Force Internal Process Report, Form 1.67.04, is activated.

- A. Use of Form.** This form is used to record the findings of the involved employee's Area/division commanding officer(s), bureau commanding officer, and the Commanding Officer, RMG, for all Non-Categorical use of force incidents.
- B. Completion.** A separate Non-Categorical Use of Force Internal Process Report (Internal Process Report) shall be completed for each officer involved in a use of force incident.
- C. Distribution.** The original Internal Process Report and the original Non-Categorical Use of Force Report shall be attached and forwarded to the Commanding Officer, RMG, via the involved officer's chain of command. After disposition by the Commanding Officer, RMG, copies of the reports shall be distributed by RMG as follows:
- 1 - Original, Commanding Officer, RMG
  - 1 - Copy, Commanding Officer, Training Division
  - 1 - Copy, employee's bureau commanding officer (for distribution to involved Area)
- 3 - TOTAL**

**V. INVESTIGATING A NON-CATEGORICAL USE OF FORCE INCIDENT.**

- A. Employee's Responsibility.** An employee involved in a Non-Categorical use of force incident shall follow Department procedure for reporting such incidents (Manual Section 4/245.10).
- B. Supervisor's Responsibility.** When a Non-Categorical use of force incident occurs, an uninvolved supervisor from the employee's command, or from the nearest Area when either the employee's command is closed or the employee's supervisor is not available to respond, shall be assigned to conduct the administrative investigation. A supervisor who

participated in or witnessed the use of force, planned the event, or was present at a forced blood withdrawal from a suspect, **shall not** investigate the incident. The supervisor assigned to conduct the investigation shall:

- \* Respond and conduct an on-scene investigation;

**Exception:** When an on-scene investigation is impractical due to exigent circumstances, such as a hostile group or an off-duty employee's distance from the City, the supervisor shall consult with his/her watch commander or officer in charge and arrange for a reasonable alternative.

- \* Collect and preserve all appropriate evidence and canvas the scene to locate witnesses, when appropriate;
- \* Conduct and document individual interviews with all involved Department employees, civilian witnesses, and the person(s) against whom force was used (group interviews are prohibited);
- \* Identify and document any inconsistencies from those interviews;
- \* Interview all involved supervisors regarding their actions taken;
- \* Ensure that any related arrest report or Employee's Report, Form 15.7, contains a complete account of the incident (Manual Section 4/245.10);
- \* Review and approve all related reports (e.g., arrest report, etc.) prior to going end of watch (this responsibility shall not be delegated or postponed);
- \* Complete a Non-Categorical Use of Force Report, including an attached narrative; and,
- \* Forward the completed Non-Categorical Use of Force Report along with all related reports, to the watch commander/officer in charge. Generally, a Non-Categorical Use of Force Report should be completed before the investigating supervisor's end of watch. However, complex incidents may require additional time not to exceed two calendar days following the incident.

**Note:** The initiation of a personnel complaint, should it become necessary, is addressed in Section VIII of this Order.

C. **Completing the Narrative.** The supervisor completing the Non-Categorical Use of Force Report shall include an attached narrative using the following headings:

1. **Incident Overview.** The narrative shall begin with a brief overview of events leading up to and following the use of force. The use force incident itself is summarized in Section 5 of these headings.) Care must be taken to avoid conflicts with similar information provided in other reports, including the crime, arrest, or employee reports.
2. **Witness Statement(s).** Witness statements shall include the following information, when available:
  - \* **Non-Employee:** Full name and address (including ZIP Code), telephone number, social security or driver's license number, and state of issue; or,
  - \* **Department Employee:** Full name, rank and serial number, current assignment, and work telephone number.

This section shall include a statement from all persons involved in the use of force incident. However, members of the public must be afforded their Fourth Amendment rights in accordance with existing Department guidelines. (Currently, those are discussed in Legal Bulletin, Volume 17, No. 1, July 1993, Detaining Witnesses to a Homicide or Other Serious Crime, and Training Bulletin, Volume 33, Issue 1, February 2001, Legal Contacts with the Public.)

A full statement from the witness shall be attached to the Non-Categorical Use of Force Report and then paraphrased in the witness statement section. Absent unusual circumstances, the supervisor conducting a use of force investigation is not required to tape-record these interviews.

**Note:** A witness's refusal to provide a statement shall also be documented under this section. If this should occur, an attempt

shall still be made to obtain the witness's identifying information.

The corresponding Division of Records (DR) number shall be written in the upper right corner of the attached statements.

Generally, witnesses should be interviewed in the following sequence:

- a. Uninvolved Department employee(s)
- b. Involved Department employee(s)
- c. Person(s) upon whom force was used
- d. Any other witness(es)

When statements of witnesses conflict, the investigating supervisor shall make every effort to document the conflicting portion of each witness's statement as closely as possible. In an effort to resolve such discrepancies, the investigating supervisor shall attempt to establish each witness's vantage point when they observed the use of force as well as any other variables such as time of day, lighting, weather conditions, noise level, or traffic patterns.

3. **Injuries/Medical Treatment.** Document all visible and complained of injuries, including any medical treatment provided, and request a written Authorization for Release of Medical Information from each injured person. The supervisor shall specifically ask the person(s) against whom force was used if and how they were injured, and include that information in this section along with the supervisor's determination whether any injury was consistent with the actions reported.
4. **Photographs and Other Evidence.** Investigating supervisors shall photograph the scene of a use of force incident and provide a brief description of all photographs submitted with the report. Supervisors shall also photograph:
  - \* The person upon whom force was used, including the area of impact, as well as any visible or complained of injuries (color photographs

taken by Scientific Investigation Division are preferred);

- \* All evidence recovered; and,
- \* The vantage point of a witness when it may prove useful in resolving conflicting statements between witnesses.

When appropriate, the investigating supervisor should cause a diagram of the scene to be drawn.

5. **Use of Force Summary.** Based upon the interviews, injuries, and other evidence, the investigating supervisor shall provide a summary of the use of force, including the techniques and tactics used by the involved officer(s). That summary shall include, but is not limited to, the officer's planning, communication, observations, approach, and flexibility.

When appropriate, the investigating supervisor shall identify logical alternative use of force techniques and explain why they were not used (e.g., chemical irritant control device was not used due to wind conditions, baton was not used due to lack of space, or spontaneous action did not allow time for verbalization).

6. **Watch Commander/Officer in Charge Insight.** The watch commander/officer in charge reviewing the report shall provide his/her insight in the space provided at the bottom of the Non-Categorical Use of Force Report. In addition to discussing the tactical and policy issues, the watch commander/officer in charge shall evaluate the supervision of the incident, or lack thereof.

## VI. ADJUDICATING A NON-CATEGORICAL USE OF FORCE INCIDENT.

- A. **Commanding Officer's Responsibility.** Upon receipt of a Non-Categorical Use of force investigation, the commanding officer shall:

- \* Utilize the Area/division Training coordinator to evaluate the incident;
- \* Contact subject matter experts (e.g., Training Division) to obtain additional information, as needed;

- \* Review all reports and make a recommendation on the disposition;
- \* Sign the Internal Process Report;
- \* Forward the Internal Process Report, with all related reports attached, to the bureau commanding officer within 14 calendar days following the use of force; and,
- \* Notify the employee of RMG's final disposition as soon as practicable.

**B. Bureau Commanding Officer's Responsibility.** Upon receipt of the Non-Categorical use of force investigation, the bureau commanding officer shall:

- \* Cross-staff with Internal Affairs Group (IAG) to determine if a related personnel investigation has been initiated regarding the use of force incident and, if so, take that information into consideration;
- \* Review all reports and make a recommendation on the disposition;
- \* Sign the Internal Process Report;
- \* Forward the Internal Process Report, with all related reports attached, to the Commanding Officer, RMG, within seven calendar days of receipt; and,
- \* Upon receipt of the disposition from RMG, notify the employee's commanding officer of that disposition.

**C. Commanding Officer, Risk Management Group, Responsibility.** The Commanding Officer, Human Resources Bureau (HRB), is the Department's review authority for the administrative review of all use of force incidents. For Non-Categorical uses of force, that authority is generally exercised through the Commanding Officer, RMG, who shall:

- \* Review the Non-Categorical use of force investigation and all related reports to ensure compliance with Department policy and procedure;
- \* Approve or disapprove the recommended disposition;
- \* Provide a written rationale for any finding that differs from that of the bureau commanding officer;
- \* Retain the original Internal Process Report and copy of all related reports; and,



- \* Forward a copy of the completed Internal Process Report to the bureau commanding officer within 14 calendar days.

If the Commanding Officer, RMG, requires further information prior to adjudication, such a request shall be submitted to the employee's bureau commanding officer.

**VII. INCIDENTS INVOLVING MULTIPLE COMMANDS, MULTIPLE USES OF FORCE, MULTIPLE ADMINISTRATIVE INVESTIGATIONS OR TRAINING.**

- A. Multiple Commands Involved.** If officers from different commands (e.g., Narcotics Division and Hollenbeck Area) are involved in a single Non-Categorical use of force, only one commanding officer shall adjudicate the incident. Generally, an operational command should complete the use of force investigation and that same command should assume adjudicating responsibility. The commanding officer adjudicating the incident should discuss the adjudication with the other commanding officer(s). The next level of review shall be the adjudicating command's chain of command.
- B. Multiple Uses of Force.** When multiple uses of force occur during a single incident, each use of force must be identified and evaluated separately. In such cases, there may be varying dispositions for each use of force (e.g., the baton strike was in policy, but the front kick was out of policy). In these instances, each level of review shall complete an attached narrative identifying and classifying each separate use of force. The most serious classification (e.g., Administrative Disapproval), shall be indicated on the face sheet of the Internal Process Report.
- C. Use of Force involving a Pursuit or Traffic Collision.** On occasion, a use of force will occur in conjunction with a pursuit or employee-involved traffic collision, each of which requires an on-scene administrative investigation by a supervisor. In such cases, the same uninvolved supervisor may conduct each of the administrative investigations and prepare the required administrative reports.

When a use of force, pursuit and/or traffic collision are involved, they shall be reviewed together through the process for reviewing Non-Categorical uses of force. The Commanding Officer, RMG, shall coordinate his/her determination with the staff officer responsible for final determination of the related administrative investigation(s). This includes providing sufficient information to facilitate their record-keeping responsibilities.

- D. Recordation of Training.** In cases where formal training is directed as the result of a use of force review (i.e., any training provided by Training Group), Continuing Education Division shall enter all completed training into the Training Management System (TMS). All other forms of directed training (e.g., divisional training) shall be entered into TMS by the employee's Area/division. In all cases, the corresponding administrative file number (usually the DR number) shall be included in the TMS entry.

#### **VIII. INITIATING A PERSONNEL COMPLAINT.**

Experience has shown that, with rare exception, it is a poor practice to initiate simultaneous administrative investigations into the same incident. This is particularly true at the preliminary investigative stage when the facts have not yet been determined. With that in mind, the following procedure shall apply to the investigation and adjudication of a use of force that may contain a complaint of misconduct.

- A. Complaint Unrelated to a Non-Categorical Use of Force.** When a complaint is unrelated to a use of force, a Complaint Form, Form 1.28, shall be initiated immediately (e.g., an arrestee who alleges improper comments by officers transporting him/her to the station from the scene of use of force).
- B. Complaint Related to a Non-Categorical Use of Force.** When a complaint is related to a use of force, the investigating supervisor shall notify his/her watch commander or officer in charge immediately. If deployed, the Department Commander of Chief's Duty Officer shall also be notified. The watch commander or officer in charge shall assess the situation and

determine if immediate notification to IAG is required.

**Note:** Manual Section 3/815.10 requires immediate notification in cases that may subject the Department to severe criticism or liability.

If IAG does not respond and assume responsibility for investigating the incident as a personnel complaint, the supervisor shall complete the use of force investigation and include the complaint information in his/her report. In such cases, determination on whether to initiate a personnel complaint will be made during adjudication of the use of force investigation.

**Note:** Versions of events that differ from one another do not amount to an allegation of misconduct for purposes of determining preliminary investigative responsibility. In such cases, the supervisor should conduct a thorough use of force investigation and document the conflicting statements in accordance with Section V, C, 2 of this Order.

**C. Initiating a Personnel Complaint During Adjudication.**

When the involved employee's bureau commanding officer determines that a use of force contains an allegation(s) of misconduct or makes an out of policy or Administrative Disapproval finding, he/she shall direct the involved employee's commanding officer to initiate a Personnel Complaint. In such cases, a copy of the entire use of force investigation shall be attached to the complaint face sheet.

Because of the variety of possibilities inherent in this procedure, it is probable that, on occasion, a decision will be made to initiate a complaint on one aspect of an incident after a complaint has already been initiated on another aspect. In such cases, the Commanding Officer, IAG, shall be contacted to determine if a separate complaint should be initiated or if the new allegation(s) should be included in the existing complaint. Generally, one complaint should address all aspects of the same incident.

**IX. RECORDING SUPPLEMENTAL INFORMATION.** When additional information is discovered prior to completion of the use of force investigation, that information shall be incorporated into the report with the date, time and circumstances under which the supplemental information was received. However, on occasion, supplemental information is obtained after the use of force investigation has been completed. When that occurs, the following procedure shall apply:

- A. Prior to Adjudicating the Use of Force.** When supplemental information is obtained prior to adjudicating the use of force, that information shall be added to the use of force investigation via an Employee's Report, Form 15.7 and considered in conjunction with the original report.
- B. After a Personnel Complaint Has Been Initiated.** When a personnel complaint has been initiated, supplemental information shall be reported in writing to the assigned investigator(s) via Intradepartmental Correspondence, Form 15.2.
- C. After Adjudicating a Use of Force, No Personnel Complaint Initiated.** When a use of force has been adjudicated and no personnel complaint was initiated, the supplemental information shall be included on a form 15.2 and considered by the chain of command reviewing the original use of force.

The document containing the supplemental information shall be attached to and retained with the initial use of force investigation (e.g., original retained by RMG, copies retained by the involved employee's bureau and Area/Specialized division commanding officer).

**ROLE OF THE INSPECTOR GENERAL.** The Consent Decree also requires that the Office of the Inspector General conduct regular and periodic audits, including a random sample of all Non-Categorical use of force incidents. This review will assess the quality and completeness of an investigation and evaluate its findings and final disposition. The Inspector General will also review whether investigations were completed in a timely manner, and verify that statements summarized and transcribed accurately reflect any recorded statements. The Inspector General will also verify that all available evidence was collected and analyzed, and the investigation was properly adjudicated. The

Inspector General will report his/her findings in writing to the Police Commission.

**FORM AVAILABILITY:** Copies of the Non-Categorical Use of Force Report, Form 1.67.05, and the Non-Categorical Use of Force Internal Process Report, Form 1.67.04, are attached for duplication and immediate use. The forms will be available for ordering from the Department of General Services, Distribution Center, in about 90 days, and will be available on the Local Area Network.

**AMENDMENTS:** This Order amends Section 4/245.10, adds Sections 3/796.5, 5/1.67.04 and 5/167.05, and deletes Section 5/1.67.2 to the Department Manual.

**AUDIT RESPONSIBILITY:** The Commanding Officer, RMG, shall monitor compliance with this directive in accordance with Department Manual Section 0/080.30.

**BERNARD C. PARKS**

**Chief of Police**

Attachments

**DISTRIBUTION "D"**